CEQ NEPA Task Force Report

What Does It Mean To The Corps?

Rich Fristik CEIWR-MD

Meg Smith CEIWR-PD

Purpose

- Brief **background** and impetus for report
- **Summarize** content and recommendations
- Suggest **implications** of the report to Corps planning and NEPA implementation

Background

- Formally titled ‘Modernizing NEPA Implementation’
- Task force formed April ‘02
- Eight members representing various Federal agencies; directed by Horst Greczmiel, CEQ Associate Director for NEPA Oversight
- Examined current NEPA implementation practices and procedures, focusing on …

Focus Areas

- Technology and information management and security
- Federal and intergovernmental collaboration
- Programmatic analyses and tiering
- Adaptive management and monitoring
- Categorical exclusions
- Environmental assessments

Methodology

- Review of existing literature, reports, case studies
- Solicited comment from Federal/state/local government agencies, Tribes, organizations and individuals
- Over 650 respondents provided comment
- USFS prepared summary of comments

Report Summary

- Report released September 2003
- Key TF recommendations:
  - 'Road maps' in programmatic documents
  - Importance of monitoring and adaptive management
  - Link environmental management systems to adaptive management
  - Strengthen public involvement

Key recommendations (cont'd)

- Emphasize NEPA interplay with other environmental laws
- Need more uniformity between agency implementing regulations
- Better guidance on categorical exclusions
- CEQ should provide procedural and legal consultation

More key recommendations

- NEPA training for public, ‘Citizen’s Guide to NEPA’
- Interagency working group to enhance collaboration, information sharing, data management
- Develop handbook on social/cultural/economic analysis
- Guidance on EAs

Technology/IM/Security

- Importance of informing & involving decision-makers and the public
- Quality information can decrease paperwork, increase consistency, and foster timely/equitable exchange
- Tracking software or management systems (example at http://tis.ch.doe.gov/nepa/) to decrease delays
- Focus data and analytical models on relevant environmental issues
- CEQ NEPAnet should accommodate emerging technologies

Concerns/issues with IT

- **Still need a variety of communication mechanisms in addition to electronic**
- **As more information is provided, stakeholders desire more, so face security and workload concerns**
- **Fear that IT could stifle innovation, by replacing human insight and judgment, or by neglecting traditional public involvement and impact assessment**

Programmatic Analysis & Tiering

- **'Road maps' to better define issues at programmatic level, and how they will be more fully explored/refined at site-specific level**
- **Federal Advisory Committee, CEQ guidance on programmatic document content**
- **CEQ set time frames for programmatic document 'viability' (?)**
- **CEQ should issue general guidance, and advise on supplementation**

Federal & Intergovermental Collaboration

- Focused on Successful Collaboration and Factors that contribute to success
- Recommendation
  - Establish Federal Advisory Committee to contribute to collaborative guidance and training
    - Information Sharing
    - Development of Agreements for Collaboration
    - Innovative Training on NEPA Topics

Environmental Assessments

- **CEQ/agencies develop guidance & handbook on EA efficiency/effectiveness**
- **Checklists don't provide public understanding of agency decision-making rationale**
- **Don't apply Q.40 of 40 Most Asked; CEQ aims to revise**
- **Caution on excessive, sometimes EIS-like alternative analysis**
- **Need better definition of no action alternative**

Environmental Assessments

- PI should be commensurate with level of impacts, public interest, project complexity/controversy
- Better define “unresolved conflict concerning the alternative uses of available resources”
- Document eliminated alternatives at beginning of document, and explain why

Adaptive Management Model

- Task Force Focused on Integrating Adaptive Management Model into the NEPA Process
  - "Predict, mitigate, implement, **monitor and adapt**"
- Adaptive Management Benefits & Concerns
- Issues & Recommendations

Benefits of Adaptive Management

- **Can Help Determine whether Mitigation is Cost Effective & if Predicted Impacts Occurred.**
- **It might be able to enhance environmental protection and make cost savings adjustments.**
- **It might be appropriate when mitigation measures are the basis for a FONSI and a mechanism is needed to ensure that the mitigation worked as predicted.**

Agency Concerns

- **Cost of Monitoring, Funding and Commitment for Adaptive Management**
- **Assurance that adaptive management won't result in requirement to re-open NEPA process**
- **Addressing cumulative effects of adaptive management actions**
- **Public Involvement requirements for adaptive management actions**

Task Force Recommendations

- Definition of Adaptive Management
- Initiate a Pilot Program
- Guidance on how to evaluate adaptive management especially Environmental Assessments relying on Mitigation & Cumulative Effects
- Use of state and local entities to assess impacts of adaptive management approaches
- Identify mechanisms for oversight and enforcement of adaptive management commitments

Categorical Exclusions

- Documenting categorical exclusions
- Categorical exclusion development & revision
- Categorical exclusion approval process

Documentation of Categorical Exclusions

- Confusion about the level of analysis and documentation required to demonstrate that an activity is consistent with an approved categorical exclusion
- Concerns for Litigation
- Perception that an EA is easier to document

Categorical Exclusion Development & Revision

- **Perception that Categorical Exclusions are Difficult to Develop or Revise**
- **Corps were last updated in 1988 – efforts to revise ER-200-2-2 initiated in 1997 not yet completed**
- **Need to analyze past activities and effects but this is difficult without post implementation studies or monitoring needed to support/justify CE**
- **Administrative Record to Support Categorical Exclusion**

Categorical Exclusion Approval Process

- **Internal Agency & CEQ Reviews Take Too Much Time**
- **Agency Confusion about CEQ Review Process – Results in Agencies "Making Do" with existing lists**
- **Report Clarifies Approval Process**
  - Informally consult with CEQ during development
  - Publish in Federal Register
  - Address Comments, Revise Accordingly, Request CEQ Approval
  - CEQ has 30 days to Review and Determine Conformity

Public Involvement & Resource Constraints

- Public Comment Limited to Federal Register Notice
- Additional effort should be made for major changes
- Agencies & CEQ Face Resource Constraints Affecting CE Development and Revisions and Review and Approval Time

Issues & Recommendations

- Additional Guidance from CEQ Should
  - Clarify documentation requirements
  - Identify methods and information for determining cumulative effects of categorical exclusions
  - Encourage agencies to develop and revise categorical exclusions
  - Clarify CEQ process and recommit to the 30 day Review period

What's happening now?

- Prioritization of recommendations, some will 'fall off table'
- CEQ conducted 4 regional roundtables, Oct. 03 to Jan. 04; WA, PA, TN, CO
- Roundtable results ???
- Prioritization …

Additional Areas of Consideration

- Public concern about agency shortages of funds and skills
- Process management (‘Analysis paralysis’)
- Greater attention to coordinating compliance with related statutes (e.g., new NHPA S. 106)
- CEQ guidance on framing reasonable alternatives

Additional Areas of Consideration

- Compile handbook on economic/social/cultural analyses
- Bolster CEQ staff
- Hold annual NEPA legal forums
- Produce a handbook on overall NEPA process

What's happening now?

- Prioritization of Initiated
  - CEQ conducted 4 regional roundtables, Oct. 03 to Jan. 04; WA, PA, TN, CO
- Roundtable results Prioritization ...
  - Guidance on Environmental Assessments
  - Guidance on Categorical Assessments
  - Adaptive Management
  - Technology & Programmatic Analyses